

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant : Bernhard B. Sterling et al.
Appl. No. : 10/825,085
Filed : April 15, 2004
For : METHOD OF DETERMINING
ANALYTE CONCENTRATION IN A
SAMPLE USING INFRARED
TRANSMISSION DATA

Examiner : Jarreas C. Underwood
Group Art Unit : 2877

DECLARATION OF BRUCE S. ITCHKAWITZ PURSUANT TO 37 C.F.R. § 1.132**Mail Stop Amendment**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

I, Bruce S. Itchkawitz, declare as follows:

1. I have reviewed the above-captioned patent application, including the specification, the originally-filed claims, and the currently-pending claims. I have also reviewed the May 3, 2006 Office Action in the above-captioned patent application, including the rejection of Claims 1 and 25 under 35 U.S.C. § 102(e), as being anticipated by U.S. Patent No. 6,862,534 issued to Sterling et al. ("the '534 patent"). I have also reviewed the '534 patent.

2. The correct inventorship for the '534 patent lists Bernhard B. Sterling, James R. Braig, Daniel Goldberger, and Kenneth G. Witte.

3. The inventorship of the above-captioned patent as filed lists Bernhard B. Sterling, James R. Braig, Daniel Goldberger, Phillip C. Hartstein, and Robert D. Gaffney.

4. The correct inventorship of the above-captioned patent application is Bernhard B. Sterling, James R. Braig, Daniel Goldberger, and Kenneth G. Witte.


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5. I am currently in the process of gathering the appropriate declarations for a petition to correct the inventorship of the above-captioned patent application to reflect the correct inventorship of Bernhard B. Sterling, James R. Braig, Daniel Goldberger, and Kenneth G. Witte.

6. Thus, the inventors of the '534 patent and the above-captioned patent application are identical, so the '534 patent does not disclose an invention by another and therefore, the '534 patent cannot be the basis for a proper anticipation rejection of Claims 1 and 25 of the above-captioned patent application under § 102(e).

7. I hereby declare that all statements made herein of my own knowledge are true, and that all statements made upon information and belief are believed to be true; and further, that these statements were made with the knowledge that willful, false statements and the like so made are punishable by fine or imprisonment, or both under Section 1001, Title 18 of the United States Code, and that willful, false statements may jeopardize the validity of the application or any patent issuing thereon.

Dated: 4/2/06

By: 
Bruce S. Itchkawitz

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